

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**THOMAS MARTINEZ**

**PLAINTIFF**

**V.**

**CAUSE NO. 3:14-CV-810-CWR-FKB**

**UNITED STATES OF AMERICA, ET AL.**

**DEFENDANTS**

**ORDER**

Before the Court are the defendants' motion to dismiss, or in the alternative, motion for summary judgment; the plaintiff's motion to take judicial notice; the Magistrate Judge's Report and Recommendation (R&R) on those motions; and the plaintiff's objections to the R&R. The matters are fully briefed and ready for adjudication.

The Court has reviewed the plaintiff's objections *de novo*. It concludes that the Magistrate Judge's thorough review of the record and the law reached the correct findings and conclusions. The R&R is therefore adopted, with one amendment:

In his motion to take judicial notice, the plaintiff sought to bolster his claims in this suit – which was filed in 2014 – by showing that in 2015 and 2016, the defendants continued to be non-responsive to his requests for medical care. As the Magistrate Judge described at page 12 of the R&R, however, applicable law requires federal prisoners to first exhaust administrative procedures *before* filing suit. It follows that if the plaintiff desires judicial relief on alleged constitutional violations occurring in 2015 and 2016, he should pursue them through the administrative process and then file a new suit on those particular claims. The motion to take judicial notice must therefore be denied.

The R&R is adopted with the above amendment, the motion to take judicial notice is denied, and the defendants' dispositive motion is granted in part and denied in part.

**SO ORDERED**, this the 21st day of September, 2016.

s/ Carlton W. Reeves  
UNITED STATES DISTRICT JUDGE